

# *The Commonwealth of Massachusetts*



*Department of Revenue*

*Lowell Saltonstall Building,*

*100 Cambridge Street, Boston 02204*

L. JOYCE HAMPER  
COMMISSIONER

December 10, 1982

("Company") sells diesel fuel for use in motor boats, including boats engaged in commercial fishing. You inquire what information must be supplied by a commercial fisherman to substantiate that he is making a purchase of diesel fuel that is exempt from the sales tax under General Laws Chapter 64H, Section 6.

General Laws Chapter 64H, Section 6(r) provides in part that sales of materials, tools and fuel, or any substitute therefor, which are consumed and used directly and exclusively in commercial fishing are exempt from tax.

Sales of tangible personal property subject to the special fuels tax are exempt from the sales tax (G.L. c. 64H, s. 6(g)), but the special fuels tax does not apply to diesel fuel used in the operation of motor boats (G.L. c. 64E, s. 1(c) and (h)).

All gross receipts of a vendor from Massachusetts sales of tangible personal property are presumed to be from sales subject to tax until the contrary is established (G.L. c. 64H, s. 8(a)). Section 8(f) of Chapter 64H provides that if tangible personal property is purchased by a person who will use it in a manner that exempts it from the sales tax, he may give an exempt use certificate (Form ST-12) to the vendor, certifying that the property will be so used.

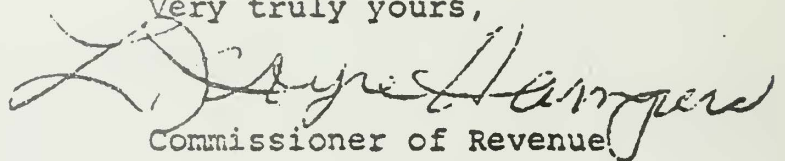
Accordingly, the Company may accept an exempt use certificate in lieu of collecting the sales tax on sales of diesel fuel for direct and exclusive use in commercial fishing. However, if the Company has knowledge of facts that give rise to a reasonable

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inference that the fuel will not be consumed directly and exclusively in commercial fishing, but rather in some other activity (as, for example, in recreational boating or sport fishing), it may not accept an exempt use certificate and must collect and pay over the tax on the sale of the items; this is so even if the purchaser holds a commercial fishing license.

You also inquire specifically whether you must collect the sales tax on sales of diesel fuel to ("Customer"). According to its advertising literature, the Customer is engaged not in commercial fishing but in the operation of sport fishing charters and sight-seeing cruises. Purchases of diesel fuel for use in such operations are subject to the sales tax.

Very truly yours,



Commissioner of Revenue

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